

WORKER'S DISABILITY COMPENSATION ACT OF 1969 (EXCERPT)
Act 317 of 1969

418.354 Coordination of benefits.

Sec. 354. (1) This section is applicable when either weekly or lump sum payments are made to an employee as a result of liability pursuant to section 351, 361, or 835 with respect to the same time period for which old-age insurance benefit payments under the social security act, 42 U.S.C. 301 to 1397f; payments under a self-insurance plan, a wage continuation plan, or a disability insurance policy provided by the employer; or pension or retirement payments pursuant to a plan or program established or maintained by the employer, are also received or being received by the employee. Except as otherwise provided in this section, the employer's obligation to pay or cause to be paid weekly benefits other than specific loss benefits under section 361(2) and (3) shall be reduced by these amounts:

(a) Fifty percent of the amount of the old-age insurance benefits received or being received under the social security act.

(b) The after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by the same employer from whom benefits under section 351, 361, or 835 are received if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy. If such self-insurance plans, wage continuation plans, or disability insurance policies are entitled to repayment in the event of a worker's compensation benefit recovery, the carrier shall satisfy such repayment out of funds the carrier has received through the coordination of benefits provided for under this section. Notwithstanding the provisions of this subsection, attorney fees shall be paid pursuant to section 821 to the attorney who secured the worker's compensation recovery.

(c) The proportional amount, based on the ratio of the employer's contributions to the total insurance premiums for the policy period involved, of the after-tax amount of the payments received or being received by the employee pursuant to a disability insurance policy provided by the same employer from whom benefits under section 351, 361, or 835 are received, if the employee did contribute directly to the payment of premiums regarding the disability insurance policy.

(d) The after-tax amount of the pension or retirement payments received or being received pursuant to a plan or program established or maintained by the same employer from whom benefits under section 351, 361, or 835 are received, if the employee did not contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits.

(e) The proportional amount, based on the ratio of the employer's contributions to the total contributions to the plan or program, of the after-tax amount of the pension or retirement payments received or being received by the employee pursuant to a plan or program established or maintained by the same employer from whom benefits under section 351, 361, or 835 are received, if the employee did contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits.

(f) For those employers who do not provide a pension plan, the proportional amount, based on the ratio of the employer's contributions to the total contributions made to a qualified profit sharing plan under section 401(a) of the internal revenue code or any successor to section 401(a) of the internal revenue code covering a profit sharing plan which provides for the payment of benefits only upon retirement, disability, death, or other separation of employment to the extent that benefits are vested under the plan.

(2) To satisfy any remaining obligations under section 351, 361, or 835, the employer shall pay or cause to be paid to the employee the balance due in either weekly or lump sum payments after the application of subsection (1).

(3) In the application of subsection (1) any credit or reduction shall occur pursuant to this section and all of the following:

(a) The bureau shall promulgate rules to provide for notification by an employer or carrier to an employee of possible eligibility for social security benefits and the requirements for establishing proof of application for those benefits. Notification shall be promptly mailed to the employee after the date on which by reason of age the employee may be entitled to social security benefits. A copy of the notification of possible eligibility shall be filed with the bureau by the employer or carrier.

(b) Within 30 days after receipt of the notification of possible employee eligibility the employee shall:

(i) Make application for social security benefits.

(ii) Provide the employer or carrier with proof of that application.

(iii) Provide the employer or carrier with an authority for release of information which shall be utilized by the employer or carrier to obtain necessary benefit entitlement and amount information from the social

security administration. The authority for release of information shall be effective for 1 year.

(4) Failure of the employee to provide the proof of application or the authority for release of information as prescribed in subsection (3) shall allow the employer or carrier with the approval of the bureau to discontinue the compensation benefits payable to the employee under section 351, 361, or 835 until the proof of application and the authority for release of information is provided. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the required proof of application, or the authority for release of information, or both.

(5) If the employer or carrier is required to submit a new authority for release of information to the social security administration in order to receive information necessary to comply with this section, the employee shall provide the new authority for release of information within 30 days of a request by the employer or carrier. Failure to provide the new authority for release of information shall allow the employer or carrier with the approval of the bureau to discontinue benefits until the authority for release of information is provided as prescribed in this subsection. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the new authority for release of information.

(6) Within 30 days after either the date of first payment of compensation benefits under section 351, 361, or 835, or 30 days after the date of application for any benefit under subsection (1)(b), (c), (d), or (e), whichever is later, the employee shall provide the employer or carrier with a properly executed authority for release of information which shall be utilized by the employer or carrier to obtain necessary benefit entitlement and amount information from the appropriate source. The authority for release of information is effective for 1 year. Failure of the employee to provide a properly executed authority for release of information shall allow the employer or carrier with the approval of the bureau to discontinue the compensation benefits payable under section 351, 361, or 835 to the employee until the authority for release of information is provided. Compensation benefits withheld shall be reimbursed to the employee upon providing the required authority for release of information. If the employer or carrier is required to submit a new authority for release of information to the appropriate source in order to receive information necessary to comply with this section, the employee shall provide a properly executed new authority for release of information within 30 days after a request by the employer or carrier. Failure of the employee to provide a properly executed new authority for release of information shall allow the employer or carrier with the approval of the bureau to discontinue benefits under section 351, 361, or 835 until the authority for release of information is provided as prescribed in this subsection. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the new authority for release of information.

(7) A credit or reduction under this section shall not occur because of an increase granted by the social security administration as a cost of living adjustment.

(8) Except as provided in subsections (4), (5), and (6), a credit or reduction of benefits otherwise payable for any week shall not be taken under this section until there has been a determination of the benefit amount otherwise payable to the employee under section 351, 361, or 835 and the employee has begun receiving the benefit payments.

(9) Except as otherwise provided in this section, any benefit payments under the social security act, or any fund, policy, or program as specified in subsection (1) which the employee has received or is receiving after March 31, 1982 and during a period in which the employee was receiving unreduced compensation benefits under section 351, 361, or 835 shall be considered to have created an overpayment of compensation benefits for that period. The employer or carrier shall calculate the amount of the overpayment and send a notice of overpayment and a request for reimbursement to the employee. Failure by the employee to reimburse the employer or carrier within 30 days after the mailing date of the notice of request for reimbursement shall allow the employer or carrier with the approval of the bureau to discontinue 50% of future weekly compensation payments under section 351, 361 or 835. The compensation payments withheld shall be credited against the amount of the overpayment. Payment of the appropriate compensation benefit shall resume when the total amount of the overpayment has been withheld.

(10) The employer or carrier taking a credit or making a reduction as provided in this section shall immediately report to the bureau the amount of any credit or reduction, and as requested by the bureau, furnish to the bureau satisfactory proof of the basis for a credit or reduction.

(11) Disability insurance benefit payments under the social security act shall be considered to be payments from funds provided by the employer and to be primary payments on the employer's obligation under section 351, 361, or 835 as old-age benefit payments under the social security act are considered pursuant to this section. The coordination of social security disability benefits shall commence on the date of the award certificate of the social security disability benefits. Any accrued social security disability benefits shall not be coordinated. However, social security disability insurance benefits shall only be so considered if section 224 of the social security act, 42 U.S.C. 424a, is revised so that a reduction of social security disability insurance

benefits is not made because of the receipt of worker's compensation benefits by the employee.

(12) Nothing in this section shall be considered to compel an employee to apply for early federal social security old-age insurance benefits or to apply for early or reduced pension or retirement benefits.

(13) As used in this section, "after-tax amount" means the gross amount of any benefit under subsection (1)(b), (1)(c), (1)(d), or (1)(e) reduced by the prorated weekly amount which would have been paid, if any, under the federal insurance contributions act, 26 U.S.C. 3101 to 3126, state income tax and federal income tax, calculated on an annual basis using as the number of exemptions the disabled employee's dependents plus the employee, and without excess itemized deductions. In determining the "after-tax amount" the tables provided for in section 313(2) shall be used. The gross amount of any benefit under subsection (1)(b), (1)(c), (1)(d), or (1)(e) shall be presumed to be the same as the average weekly wage for purposes of the table. The applicable 80% of after-tax amount as provided in the table will be multiplied by 1.25 which will be conclusive for determining the "after-tax amount" of benefits under subsection (1)(b), (1)(c), (1)(d), or (1)(e).

(14) This section does not apply to any payments received or to be received under a disability pension plan provided by the same employer which plan is in existence on March 31, 1982. Any disability pension plan entered into or renewed after March 31, 1982 may provide that the payments under that disability pension plan provided by the employer shall not be coordinated pursuant to this section.

(15) With respect to volunteer fire fighters, volunteer safety patrol officers, volunteer civil defense workers, and volunteer ambulance drivers and attendants who are considered employees for purposes of this act pursuant to section 161(1)(a), the reduction of weekly benefits provided for disability insurance payments under subsection (1)(b) and (c) and subsection (11) may be waived by the employer. An employer that is not a self-insurer may make the waiver provided for under this subsection only at the time a worker's compensation insurance policy is entered into or renewed.

(16) This section shall not apply to payments made to an employee as a result of liability pursuant to section 361(2) and (3) for the specific loss period set forth therein. It is the intent of the legislature that, because benefits under section 361(2) and (3) are benefits which recognize human factors substantially in addition to the wage loss concept, coordination of benefits should not apply to such benefits.

(17) The decision of the Michigan Supreme Court in *Franks v White Pine Copper Division*, 422 Mich 636 (1985) is declared to have been erroneously rendered insofar as it interprets this section, it having been and being the legislative intention not to coordinate payments under this section resulting from liability pursuant to section 351, 361, or 835 for personal injuries occurring before March 31, 1982. It is the purpose of this amendatory act to so affirm. This remedial and curative amendment shall be liberally construed to effectuate this purpose.

(18) This section applies only to payments resulting from liability pursuant to section 351, 361, or 835 for personal injuries occurring on or after March 31, 1982. Any payments made to an employee resulting from liability pursuant to section 351, 361, or 835 for a personal injury occurring before March 31, 1982 that have not been coordinated under this section as of the effective date of this subsection shall not be coordinated, shall not be considered to have created an overpayment of compensation benefits, and shall not be subject to reimbursement to the employer or carrier.

(19) Notwithstanding any other section of this act, any payments made to an employee resulting from liability pursuant to section 351, 361, or 835 for a personal injury occurring before March 31, 1982 that have been coordinated before the effective date of this subsection shall be considered to be an underpayment of compensation benefits, and the amounts withheld pursuant to coordination shall be reimbursed with interest, within 60 days of the effective date of this subsection, to the employee by the employer or carrier.

(20) Notwithstanding any other section of this act, any employee who has paid an employer or carrier money alleged by the employer or carrier to be owed the employer or carrier because that employee's benefits had not been coordinated under this section and whose date of personal injury was before March 31, 1982 shall be reimbursed with interest, within 60 days of the effective date of this subsection, that money by the employer or carrier.

(21) If any portion of this section is subsequently found to be unconstitutional or in violation of applicable law, it shall not affect the validity of the remainder of this section.

History: Add. 1981, Act 203, Eff. Mar. 31, 1982;—Am. 1983, Act 159, Imd. Eff. July 24, 1983;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1987, Act 28, Imd. Eff. May 14, 1987.

Constitutionality: The amendment of the workers' compensation act by 1987 PA 28, MCL 418.354(17)-(20), which prohibits the coordination of workers' compensation benefits for employees who were injured before the effective date of 1981 PA 203, MCL 418.354, does not violate the Due Process Clauses of the federal and state constitutions, the Contract Clause of the federal constitution, or the Separation of Powers Clause of the Michigan Constitution; the amendment was a constitutional exercise of legislative power retroactively modifying benefit levels for a legitimate purpose furthered by rational means; the statute does not abrogate any vested rights of the employees and validly may be applied to all compensation liabilities within its terms except those reduced to a final judgment before its effective date. *Romein v General Motors*, 436 Mich 515; 462 NW2d 555 (1990).

Rendered Tuesday, January 20, 2009

Page 3

Michigan Compiled Laws Complete Through PA 382, 384-427, 429, 431-455, 447-459, and 472 of 2008

The U.S. Supreme Court, affirming the 1990 Michigan Supreme Court decision, held that the statute: (1) did not substantially impair the obligations of petitioners' contracts with their employees in violation of the Contract Clause because there was no contractual agreement regarding the specific terms allegedly at issue, and (2) did not violate the Due Process Clause since its retroactive provision was a rational means of furthering a legitimate legislative purpose. Romein v General Motors, 503 US 181; 112 S Ct 1105; 117 L Ed2d 328 (1992).

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act